THE HON'BLE SMT JUSTICE T.MEENA KUMARI

&

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.21460 OF 2007

Dated: 09.10.2007

Between:

G.S.Prasadarao

..Petitioner

And

1. The Union of India rep by Secretary, M/o Personnel Public Grievances & Pensions, Govt of India, New Delhi & others.

.. Respondents.

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.21460 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This is a writ petition filed by the petitioner seeking to set aside the order of the tribunal dated 30.8.2007 in O.A.No:422 of 207 confirming the memo No:37384/Ser.I (2)/2006-1, dated 6.3.2007 of the 2nd respondent and to direct the respondents to correct the date of birth of the petitioner in service record from 5.12.1947 to 10.12.1949 with all consequential benefits.

The petitioner herein is the applicant in the above O.A. He filed the above O.A. seeking to set aside the Memo No:37384/Ser.I (2)/2006-1, dated 6.3.2007 and to direct the respondents to correct the date of birth of the applicant in service record from 5.12.1947 to 10.12.1949. The tribunal having observed that a plain reading of the order would show that the Government has examined the request of the applicant for alteration of date of birth and it was found that there is no justification to consider the request of the applicant and that it is a settled position of law that the date of birth cannot be changed either by the employee or by the employer at the verge of the retirement of the employee and it is also pointed out by the learned counsel for the respondents that in terms of paragraph-4 of A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984, which is at page-11 of the O.A that no alteration is possible at this stage and that the respondents have complied with the order of the tribunal by passing a speaking order dated 6.3.2007 by rejecting the request of the applicant, dismissed the O.A. Having aggrieved by the same, the present writ petition is preferred by the applicant.

Heard the learned Counsel for the petitioner and the learned

G.P. for Revenue.

Before going into the merits of the case, it is pertinent to note that on an earlier occasion, the applicant has filed O.A.16 of 2007 seeking for a direction to pass a speaking order on his representations as to the correction of his date of birth from 5.12.1947 to 10.12.1949. The tribunal having observed that the applicant has sought for a direction to the respondents to pass speaking order on his representation for correction of his date of birth, disposed of the O.A.16 of 2007 directing the respondents to dispose of the representation submitted by the applicant. Pursuant to the same, the 2nd respondent has passed an order vide Memo No:37384/Services.I(2)/2006-1, dated 6.3.2007 rejecting the claim of the applicant as to the alteration of his date of birth and the said order has been impugned in the present O.A.

At this stage of the proceedings, it is relevant to note the order impugned in the O.A., which reads as under:

> "On verification of the available material on records, it is found that the date of birth of the applicant has been recorded as 5.12.1947 in his school records. His date of birth has been recorded in his service register as 5.12.1947 at the time of his appointment as L.D.C in commercial tax department on 3.11.1974. Subsequently, he was appointed as Probationary Deputy Collector in the year 1990 consequent on his selection by A.P.P.S.C., he declared his date of Birth as 5.12.1947 at the time of his selection as Deputy Collector. He also declared his date of birth as 5.12.1947 even in his selection by A.P.P.S.C. He declared his date of birth as 5.12.1947 at the time of selection as Deputy Collector. He also declared his date of birth as 5.12.1947 even in his inclusion in the select list for confirmation of I.A.S.
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> Government have examined the request of the applicant for alteration of date of birth keeping in view the above back ground and also in the light of the orders issued in G.O.Ms.No:165, Finance (FR) Department, dated 21.10.1984, circular memo No:W-89-01/008/11 FR.I 89, dated 4.5.1989, G.O.Ms.No:94, Finance Department, dated 15.3.1994 and also circular memo No:20548/448/FR.I/2004, dated 13.10.2004 and

see no justification to comply with his request. The request for alteration of date of birth as 10.12.1949 from 5.12.1947 in his service Register is accordingly, is rejected."

Thus, it can be said that the above order is nothing but a compliance of the earlier order of the tribunal. While rejecting the claim of the applicant, clear and cogent reasons, which cannot be denied and disputed by the applicant, have been assigned by referring to the earlier government orders. At this stage of the proceedings, it has also been pointed out by the learned G.P. for Revenue that the Government is justified in rejecting the claim of the applicant in view of the fact that the date of birth as determined on the basis of the school records or any proof produced at the time of entering into service and entered in the service record shall be final as per Rule 2 (5) of the A.P. Public Employment (Recording & Alteration of Date of Birth) Rules, 1984, which reads as under:

"Rule 2 (5): The date of birth as determined on the basis of the school records or any proof produced at the time of entering into service and entered in the service record shall be final and no subsequent variation of date of birth in the school records for any reason, shall be relevant for the purpose of service and on that basis the date of birth entered in the service records shall not be altered except in the case of bonafide clerical error, under the orders of the Government."

Keeping in view the above rule, We have no hesitation to hold that the Government is justified in rejecting the claim of the applicant and apart from that, the tribunal is also justified in holding that the respondents have complied with the earlier order of the tribunal by passing the order impugned herein. Hence, We see no merits in this writ petition and the same is liable to be dismissed.

Accordingly, this writ petition is dismissed. No costs.

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Justice T. Meena Kumari

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Justice G.Chandraiah

Date: 9.10.2007
Gurc/Nn

THE HON'BLE SMT. JUSTICE T.MEENA KUMARI
&
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NO.21460 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

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Dated: 9.10.2007